

## MINUTES

### WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting held in Commissioners Meeting Room,  
Third Floor, Historic Court House,  
Boonville, IN  
Monday, August 10, 2009, 6:00 P.M.

**MEMBERS PRESENT:** Guy Gentry, President; Mike Moesner, Art Noffsinger, Brad Overton, and Larry Willis.

Also present were Sherri Rector, Executive Director, Morrie Doll, Attorney and Susan Hilgeman, Staff.

**MEMBERS ABSENT:** Tony Curtis and Adrienne Held.

**MINUTES:** Upon a motion by Mike Moesner and seconded by Larry Willis, the Minutes of the last regular meeting held July 13, 2009, were approved as circulated.

#### **REZONING PETITION:**

**PC-R-09-04 – Petition of R.A. McGillem Custom Homes, LLC by Ronald A. McGillem, Mngr. OWNER OF RECORD: Carlton Construction, LLC by Gregory C. Moore, Mngr.** To rezone lot 121 Woodfield Section II - 5.96 acres located on the N side of Jenner Rd. approximately 0' W of the intersection formed by Jenner Rd. (S 150) and SR 261, Ohio Twp. from "R-2" Multiple Family to "PUD" Planned Unit Development District with "R-2" Multiple Family zoning.

Larry Willis stated that if Greg Moore is a party to this, he will have to abstain, and then there will no longer be a quorum.

Mrs. Rector stated Mr. Moore no longer owns the property. She stated she has a deed recorded on August 6<sup>th</sup> that transfers the property into Mr. McGillem's name.

The President then asked Mr. Willis if he will now be able to participate.

Mr. Willis stated he will.

Present were Ronald A. McGillem, Owner, and James Morley Jr., Engineer.

The President called for a staff report.

Mrs. Rector stated all return receipts have been submitted except for Groves and Kramer; however they have submitted the white paystubs. She stated this is lot 121 in Woodfield Section 2 and the property is located at Jenner Road and SR 261. She stated it is the area which has the big retention area with the walkway around it. She stated it is a petition to rezone 5.96 acres from "R-2" Multiple Family to "PUD" with "R-2" zoning. She stated when this was originally zoned they did not have "PUD" zoning it was put in the Ordinance in 2005 and she believes this was rezoned in 2004. She stated now to meet the ordinance they are doing a "PUD" with the "R-2" zoning. She stated the Comprehensive Plan does show the area to be moderate to high density residential. She stated the property is currently vacant with the retention pond on it. She stated the property to the North is zoned "R-1B" with single family residences, to the East is zoned Agriculture with residences, to the South is zoned Agriculture with Rolling Hills Country Club, and to the West is zoned "R-2" with condo units. She stated there is no flood plain on the property. She stated the main entrance is off of Woodfield Drive with access to each lot by a private road and they are requesting a gated entrance. She stated the applicant has also filed a primary plat for approval this evening that shows a 12 lot subdivision for single family dwellings plus two outlots. She stated it is in compliance with the ordinance. She stated Attorney Doll had asked her to get letters from emergency services regarding the gated entrance. She stated she did not get letters; however she did speak with the Sheriff and the

Director of EMS, if the Board has any questions about that. She stated the Commissioners did approve the Commercial Driveway entrance that would be coming off Woodfield Drive and the street within the development will be private.

The President asked if the applicant had anything further to add to the staff report.

Mr. Morley stated he has good news, development is returning to Warrick County. He stated this is a nice project just previously platted as a "PRUD" with 6 duplexes and now they are going to have 12 stand alone units. He stated the number of units stayed the same; they just basically made them stand alone instead of duplexes. He stated the drainage plans and street plans stayed the same. He stated they ask for a positive recommendation.

Mrs. Rector stated the reason she brought up the gate and all that with the rezoning is because a "PUD" asks these questions in the Ordinance. She stated they can either file a development plan or file a plat, so they actually go together. She stated the "PUD" has to comply with the submitted plat.

Attorney Doll stated he thinks there needs to be something in the record about why they chose to use the PUD when the use is not changing.

Mr. Morley stated the previously one was a PRUD also.

Attorney Doll stated so the only real change is changing from the duplexes to the stand alone units.

Mr. Morley stated yes, but the way it was previously done, it was done as a PRUD which is a use not a zoning. He stated now that the ordinance has changed and they are now stand alone units, it will make it compliant with the current Comprehensive Zoning Ordinance.

Mr. Gentry asked if the gate was a code entrance or what.

Mr. McGillem stated yes it would be a code entrance. He stated there will be 2 separate gates, the entry gate will be activated by a key activated box, and the exit will be activated by sensor and will open automatically.

Mr. Gentry asked if they would be swing gate or retractable.

Mr. McGillem stated he did not know at this point in time he has not looked at the design yet. He stated it will more than likely be swing, it is the most popular. He stated the gate is located outside the right of way for Woodfield Drive so it is all within the PUD. He stated anyone coming into the subdivision will have room to pull off the road before they have to stop to enter the code.

Mr. Noffsinger asked what would happen in the event of a power outage.

Mr. McGillem stated it is a situation with a battery backup that when the power goes out the gates open and when the power comes back on the gate will close and become active again.

Mr. Willis stated it is a failsafe open.

Mrs. Rector stated of course the Sheriff doesn't like it. She stated that the Sheriff told her that you give them a code, if someone calls from that subdivision the code will go out over the scanner and then everyone in the County will have the access number and will no longer be private.

Mr. McGillem stated he planned to get with them early on and get them a code so they already know it and don't have to give it to them when the caller calls in.

Mrs. Rector stated that is what she means dispatch will give the officer responding the code over the scanner and everyone will have it.

Mr. McGillem stated the deputies will be given the code ahead of time and should already know it.

Mr. Gentry stated he can assure them that what will happen is that code will be on a card at dispatch, the deputies will not carry that with them, and once dispatch gives them that code everyone that has a scanner can get it.

Mr. McGillem stated that was fine they are only talking about a short street that has only 12 lots. He stated it is not a long time from getting into the gate to the end of the street, because it is only about 700 feet.

Mrs. Rector stated that was the concern of the EMS. She stated anytime they have to enter a code and wait for a gate to open, there is a delay in any emergency services. She then asked if Attorney Doll thought that they should have to enter into a hold harmless agreement with Warrick County if the emergency vehicle cannot get back there in time.

Attorney Doll stated he has still not heard why it needs to be gated.

Mr. McGillem stated from a marketing stand point they are trying to market them as a 50 plus neighborhood. He stated for the people that like to go to Florida for part of the year. He stated it is the newest concept for the lock and leave community. He stated so they not only have the exclusivity of the neighborhood but also the security. He stated obviously these types of neighborhoods have gone on all across the country for a number of years, and they do not see a large number of people dying or having problems because they live in a gated community. He stated most people like living in a gate community.

Attorney Doll stated that usually when they appear before them and they want them to approve a division that is not fronting on a private road, they require them to execute a hold harmless for the County. He stated a hold harmless holds Warrick County and all the emergency officials from any future failure to be able to service them because of the access problem. He stated normally it is a house on a piece of ground with a lane to a road and they are dealing with the home owner of the house and it runs with the land. He stated this is 12 houses, none of whom are in this room tonight and we have no idea who these 12 or 24 people are going to be, but yet they are dealing with their rights and privileges and he is a little worried. He stated if they do approve this as a gated community he would suggest that restrictions need to be clearly denoted on the plat. He stated the average home owner that buys a lot in there (6 months from now) may not know that they are agreeing to hold Warrick County harmless in case the ambulance is delayed a little bit with a loved one having a heart attack.

Mr. McGillem stated he not only does not have a problem as the developer, but he will agree to have it as part of the covenants and restrictions of this neighborhood that requires each purchaser to sign off on this. He stated he would certainly want them to be made aware of that very situation. He stated he will agree to put it as part of the plat and the private covenants and restrictions.

Mrs. Rector stated they have done that in the past. She stated Mr. McGillem has always been a good developer and done what he has said he is going to do. She stated they can require the private restrictions to be recorded with the subdivision plat.

Mr. McGillem stated there would be no problem with that.

Mr. Noffsinger asked who would take over the maintenance of the gate.

Mr. McGillem stated that is the beauty of this, it is a low maintenance community that has a homeowners association for the 12 lots and their dues are going to take care of lawn maintenance, re-mulching, snow removal, garbage removal, maintenance and repair of the gate.

Mr. Noffsinger asked after Mr. McGillem is done and the home owners association hires another company to maintain the property, will they also need to enter into the hold harmless agreement.

Attorney Doll stated that if they put a restriction in the restrictive covenants that says at all time emergency management shall have the code regardless of who the managing company is, they are probably covered.

Mr. McGillem stated they will have services that do the lawn maintenance and maintenance of the gate; he doubts that there are enough home owners there to hire an outside management firm for the whole neighborhood. He stated this is 12 homes, not 365.

Mr. Willis stated Mr. Gentry said something about having a key box for emergency management or services, he stated there are devices that can be put on the gates that when it hears the siren in a certain mode, the gate will automatically open when they are coming up to it. He stated gated communities outside this area have to have mechanisms to get them through the gate.

Attorney Doll asked what price range the homes will be.

Mr. McGillem stated they would be between the \$300,000 to \$500,000 price range.

Mr. Willis stated he wanted to make sure he understood what they were doing. He stated they are going from an 'R-2' Multiple Family to a "PUD with R-2 zoning, so all they are doing is changing it from the County taking care of the streets to where the PUD is taking care of the infrastructure.

Mr. McGillem stated that was correct and the fact that there were 6 lots with double unit buildings and now there are 12 individual lots, because they want to be able to sell individual homes.

Mrs. Rector stated the Drainage Board did approve the drainage plan, and she is putting them together because they are looking at the plan also. She stated the plan has to go with the zoning or they would have to have a separate plan.

Attorney Doll stated the drainage is a little unusual because it is for two different developments.

Mrs. Rector stated it was not built according to the originally approved drainage plans, so today the Drainage Board re-approved the original drainage plans with the berm being removed. She stated there were three conditions, but she is not sure what they are. She then stated any plat approval will be subject to conditions on Drainage Board approval.

Mr. Morley stated there was one condition and it was approved three times.

The President called for any remonstrators.

William Tate ~ 1499 Woodfield Dr. ~ stated he would like to know what a "PUD" is, what it represents, and what kind of house is going to be built over there. He stated the second item refers to the out lot #2 which indicated that all home owners in Woodfield will be responsible for the maintenance of out lot #2, which is the retention pond and according to the covenants and restrictions they supposedly signed, he would like to know about that. He stated he heard the houses would be between \$300,000 and \$500,000, which is good.

Mrs. Rector stated a "PUD" means that they can have private streets, like what is on Mr. Tate's side, they have to show a building envelope, and the building setbacks are relaxed.

Mr. McGillem stated the homes would be roughly between 2500 to 3500 square feet and there will be a little bit of variation because he is a custom builder and he is not going to restrict them on the style. He stated they will be of high architectural standards because he will be the architectural review committee and he will be building all the homes. He stated as to the retention area, this basin is actually retention for the whole Woodfield Subdivision and this language is the language that is spoken to in the previously approved Woodfield Subdivision. He stated he actually didn't want to purchase it; it was just the way it was auctioned as the entire lot.

Mrs. Rector stated so the maintenance will be paid for by not only the residences at the Enclave but the rest of the subdivision. She then asked Mr. Morley if the Villas are responsible also.

Mr. Morley stated he believes so because this retention basin services the Enclave, the Villas, Woodfield II, and part of Woodfield III. He stated he believes all are responsible for the maintenance and is prescribed under the use and development commitment. He stated this lot was originally lot 121 and that is why the Enclave is drawn into it.

Discussion was held about when they are informed of their responsibilities when buying a lot in a subdivision.

Mrs. Rector stated this plat is not making them responsible for the retention pond; it would have been done whenever the Villas would have been recorded. She stated this section has nothing to do with them and the maintenance of the retention pond, it doesn't change anything.

Attorney Doll stated you have been responsible since you bought the property.

Thomas Kilmartin ~ 1469 Woodfield Dr. ~ stated the way he understood it there were supposed to be 18 condo units originally and that is what is described in the by-laws that were given to them. He stated now there has been a divorce of some kind, there were 6 acres sold off and now the 5 condo units stand alone. He stated they will be speaking with their attorney tomorrow night and hopefully better understand it. He stated he did not think they were responsible for anything other than what the 5 units are on.

Mrs. Rector stated he may not, she doesn't have their private restrictions, they don't keep them, and they don't enforce them.

Mr. Gentry stated they are private and are between the buyer and the seller; they have no authority to hold anybody to those. He stated that sometimes they require them to be attached to the plat, but they don't have any authority to petition those.

Mrs. Rector stated you can get a copy of them from the Recorder's Office at anytime and they will be cross-referenced to the Villa's plat.

Mr. Kilmartin stated he has the by-laws.

Mrs. Rector asked if they state they are responsible for the retention pond.

Mr. Kilmartin stated he does not recall anything about a retention pond, but then again there has been a divorce. He stated they are not going to be a part of the association anymore because of the divorce, so they are assuming they are going to have to create new by-laws for the five of them.

More discussion was held on private restrictions and cost of maintaining retaining ponds.

Attorney Doll asked if Mr. McGillem was keeping the lake.

Mr. McGillem stated it should essentially go to the Woodfield Homeowners Association. He stated he owns a lot and lives in Woodfield also, so he will be participating in the maintenance also of the retention pond.

Kathleen Kilmartin ~ 1469 Woodfield Dr. ~ stated she would like to know if this is a gated community how do they get to the retention pond. She stated if they are paying for the maintenance of it how are they supposed to access it.

Mr. Gentry stated your drainage goes there and someone has to maintain that to make sure it doesn't leak, it doesn't seep, and all that other good stuff.

Mr. McGillem stated their drainage comes down to the street, gets picked up in the inlets, and then it drains into an underground storm sewer that then drains to the lake. He stated the other issue is the sidewalk that goes around the lake and at some point in time there is going to be a side walk that goes down to it from one of the other cul-de-sacs. He stated the lake itself will not be fenced off. He stated just where the houses are going to be.

Mrs. Kilmartin stated she is very glad they are developing the area across from them and they will receive benefits from them being there.

Mike Moesner made a motion based on staff report and petition on file to recommend approval to the County Commissioners of PC-R-09-04 from "R-2" Multiple Family to "PUD" Planned Unit Development District with "R-2" Multiple Family zoning subject to the Hold Harmless Agreement. The motion was seconded by Larry Willis. Guy Gentry, Mike Moesner, Brad Overton, and Larry Willis voted for the motion and Art Noffsinger abstained, therefore, the motion carried and it will be forwarded to the County Commissioners with a recommendation of approval.

The petitioner was informed this petition would be sent to the County Commissioners with a recommendation of approval on Monday, September 14, 2009, at 4:00pm, Commissioners Meeting Room, Courthouse, Boonville, Indiana.

#### **SUBDIVISIONS FOR PRIMARY PLAT APPROVAL:**

**PP-09-05 – The Enclave at Woodfield a Replat of Lot 121 in Woodfield Section II as recorded in 2006R-008282 in the Office of the Recorder, Warrick County, Indiana** by R.A. McGillem Custom Homes, LLC by Ronald A. McGillem, Mngr. OWNER OF RECORD: Carlton Construction, LLC by Gregory C. Moore, Mngr. 5.96 acres located on the N side of Jenner Rd. approximately 0' W of the intersection formed by Jenner Rd. (S 150) and SR 261, Ohio Twp.

Present was Ronald A. McGillem, Owner, and James Morley Jr., Engineer.

The President called for a staff report.

Mrs. Rector stated the only thing she needed to add is that they have capacity from Chandler Sewer and pressure and flow from Chandler Water. She stated the primary plat would need to be subject to the rezoning passing, the hold harmless in the private restrictions before the final plat is recorded. She stated otherwise the primary plat is in technical conformity.

The President asked if the applicant had anything to add to the staff report.

Mr. Morley stated they just ask for their approval.

Mr. Willis stated he would like for Mr. McGillem to go ahead and note for the record that he is the owner of the property and not Carlton Construction.

Mr. McGillem stated yes he closed on it on August 3, 2009, so R.A. McGillem Custom Homes is the actual owner of the property.

There being no further questions by the Board and no other remonstrators, the President called for a motion.

Brad Overton made a motion to find PP-09-05 in technical conformity with the Subdivision Control Ordinance and to approve it subject to the conditions put on the plat and the zoning being passed by the County Commissioners. The motion was seconded by Larry Willis and unanimously carried.

#### **OTHER BUSINESS:**

**Complaint** – Owner: Allen, David E & Terry, 1700 Stevenson Station Rd. - junk yard/salvage yard

Present was David Allen.

The President called for a staff report.

Mrs. Rector stated Mr. Allen had appeared before us and had a problem with bugs, for lack of a better word. She stated he was going to have to leave his home for a couple of years for them to treat the problems. She stated the Board gave him 90 days to get the property cleaned up. She stated his 90 days is up and the property had not been cleaned up as of August 7<sup>th</sup>. She stated the Zoning Inspectors report states the property appears to be in the same condition it was when he did the initial inspection, several junk cars and trash all over the property. She stated the vans are still there as well as most of the other items. She stated this complaint goes back to December.

The President asked Mr. Allen if he had a chance to do anything or what.

Mr. Allen stated it was hard to get done, but he did get done what was requested and that was the pickup truck out back and the Telecom van. He stated the van was removed today and the other guy picked up the pickup right after that. He stated he had to get rid of the Telecom van because it had a commercial name on it.

Mr. Gentry asked if both of them had been removed from the property.

Mr. Allen stated yes.

Mr. Moesner asked if both Telecom vans had been removed.

Mr. Allen stated the Telecom van is gone but the Dataphones is still there. He stated he understood that he could have one there, but he doesn't really understand that rule.

Mr. Moesner stated if it is licensed.

Mr. Allen stated he understood that he could have one commercial vehicle there of any type. He stated he doesn't understand because himself, his wife, and his son, all work for the same company and all drive company vehicles, but he did it anyway. He stated the Telecom van was junk anyway because the motor and transmission were gone out of it. He stated in fact he had filled it with scrap metal before he got rid of it.

Mrs. Rector asked if there was a reason he still had the three vans and are they still operable and licensed. She then asked why he was able to remove some things and how come nothing else has been moved.

Mr. Allen stated he had a lot of problems getting that done. He stated he still does not have the roof fixed on the garage and there is a hole in it. He stated he has two tarps on it and the water still gets in there and has ruined some things. He stated he thought that is what he was asked to get done. He stated he had three people that were supposed to work on the vehicles and have never showed up.

Discussion was held on when he appeared before the Board.

Mr. Allen stated the black truck has a problem with the title and that is the one he is using for storage and then he wants to turn it into a camper.

Mrs. Rector stated it was the April 13<sup>th</sup> meeting, Mr. Allen had called on February 18<sup>th</sup> and she gave him until April 6<sup>th</sup> and if he did not have it cleaned up he would be on the April 13<sup>th</sup> meeting. She then asked Mr. Allen what his plans were for the rest of the stuff.

Mr. Allen stated nothing until he gets the roof on the garage done. He stated he has got to get the roof done.

Mrs. Rector stated in the minutes it states, "Guy Gentry made a motion to give Mr. Allen 90 days to get the vehicles operable, licensed, and ready to run and the ones that are not

need to be removed from the property.” She stated he also asked the Zoning Inspection to go out at that time to see what progress had been made. She stated Guy Gentry stated the motion was for August 10<sup>th</sup> and the motion was seconded by Joe Schitter. She stated Mr. Allen asked if he could have a camper and Mr. Gentry stated he could if he got rid of the other vehicles. She stated Mr. Schitter stated all vehicles must be running and licensed.

Mr. Gentry asked how many vehicles with engines are on his property today.

Mr. Allen stated they all have engines.

Mr. Gentry stated don’t tell him all, how many 4, 5, 8.

Mr. Allen stated 6 including the camper.

Mr. Gentry stated 1 camper and what else.

Mr. Allen stated 2 vans in the driveway, one is Telecom and one is not. He stated those both need repair and he has been trying to get someone to work on them.

Mr. Gentry stated that is 3 vehicles, what are the other 3.

Mr. Allen stated the newer car that they don’t drive yet normally because of the other situation, and then the 2 that they drive every day.

Mr. Gentry stated so there are 3 cars.

Mr. Allen stated well they are all vans, except for the gray car that they don’t drive yet.

Mr. Gentry stated 1 car, 4 vans, 1 box truck, and 1 camper.

Mr. Allen stated oh yeah, he had forgotten about that one out back. He stated that is the one he wants off the frame and to use as a shed.

Mrs. Rector stated the final motion was to give Mr. Allen 90 days to get the vehicles operable, licensed, and ready to run and the ones that are not need to be removed from the property and then the Zoning Inspector was to do an inspection and take pictures to show any improvements.

Attorney Doll asked how many don’t run now.

Mr. Allen stated 3. He stated the 3 in the driveway.

Mr. Moesner stated the black one and the two white ones.

Mr. Allen stated yes.

Attorney Doll asked if the other three are licensed, have current registrations and they drive, they can start tomorrow.

Mr. Allen stated yes.

Attorney Doll asked about the Atlas Van in the back yard, does it drive.

Mr. Allen stated no, it can.

Mr. Gentry stated that is the one he wants to make into a storage building.

Attorney Doll stated today it is a truck. He then asked if it was licensed.

Mr. Allen stated no.

Attorney Doll asked if it would run.



Mr. Allen stated it would be tough but it can. He stated it used to be at the storage location they used to rent and he paid a guy to get it running long enough to get it there.

Mr. Gentry asked what he had to do to get the 3 in the driveway running and is he still planning on selling them.

Mr. Allen stated one they were going to end up driving and the way it is now they may end up trading it in, but one will be sold.

Mr. Willis asked what business is he in or what he does for a living.

Mr. Allen stated he is on disability and for 25 years they operated Dataphones, Dataphones Systems, and Telecom was another one of their names.

Mr. Willis stated so you own one business with three names.

Mr. Allen stated yes, they had a retail store and everything.

Mr. Willis stated so they were in the data service and telephone installation, that type of thing.

Mr. Allen stated yes.

Mr. Willis stated now you are disabled and no longer in business.

Mr. Allen stated nothing is ever cut and dry to him. He stated he is allowed to do what he can and what he has to too keep the business going, he hopes to sell the company and it is not in good shape to sell right now. He stated he can't do all that is required to do. He stated he has no income from it.

Mr. Gentry asked if there was a semi trailer in front of the vans.

Mr. Allen stated no, those are 12' sections of a semi trailer that he was going to build trailers out of.

Mr. Gentry asked how many of those he had.

Mr. Allen stated just those 2.

Mr. Overton stated he would like to make a motion that the property is still not in compliance with the Comprehensive Zoning Ordinance in effect for Warrick County and give Mr. Allen 30 days to clean up the property and if it is not proceed with filing suit.

Mr. Allen asked what does that mean.

Attorney Doll stated that means you have 30 days get all non-operable vehicles and junk off the property and if you don't he will file suit on behalf of the Warrick County Area Plan Commission in Warrick Superior Court for Ordinance Violation alleging that this constitutes a junk yard/salvage yard in violation of the Comprehensive Zoning Ordinance because they are only allowed in Industrial zoned property and that this constitutes a nuisance and ask the Court to order you to clean it up, put an injunction on it to return it to its proper condition and the Ordinance carries a \$10 to \$300 per day fine until it is cleaned up.

Mr. Allen stated there is no way he can possibly get that done.

Attorney Doll stated they have been talking about this sense February.

Mike Moesner seconded the motion.

The president called for discussion.

Mr. Noffsinger stated they went through this exact same thing 90 days ago and he thinks by extending this they are going to be showing up here every month again.

Mr. Gentry stated there is no more showing up, it is either cleaned up or the Attorney will take legal action.

Mrs. Rector asked if the motion was for 30 days.

Mr. Overton stated yes.

Attorney Doll stated to be perfectly clear that would be September the 9<sup>th</sup>.

Mr. Noffsinger asked if their next meeting would be September 14<sup>th</sup>.

Mrs. Rector stated yes.

Mr. Noffsinger stated that means they can act on it at the next meeting.

Attorney Doll stated he understands the motion as to it will not be back in front of this Board.

Mrs. Rector stated she would go out on September 9<sup>th</sup> do an inspection and if the property is cleaned up the complaint will be closed, if not Attorney Doll will file suit.

Attorney Doll stated he would go with her.

Mr. Noffsinger stated that is fine but he would like a report back to the Board.

Mrs. Rector stated that would not be a problem.

Mr. Gentry stated that 30 days from tonight Mr. Allen has to have all the inoperable vehicles off the property and all the junk cleaned up.

Mr. Allen asked what he was talking about when he says, “junk”, because at one point someone said something about old wood. He stated that is all brand new cedar.

Mr. Gentry showed Mr. Allen the pictures and circled what was considered junk.

Discussion was held with Mr. Allen about what needed to be removed.

Mrs. Rector stated Mr. Allen knows what trash is and he knows what needs to be cleaned up.

Attorney Doll stated if Mr. Allen does not figure out what is trash, Judge Meyers will, he has seen it.

Discussion was held on if Mr. Overton leaves would they have a quorum.

Mr. Allen stated he still has questions.

Mr. Gentry stated they have voted on it and if you have questions you should call into the office and they will help you with it.

Mr. Allen stated he does not even know who to call.

Mr. Gentry stated the office of the Area Plan Commission. He stated the main thing is to get the vehicles operable, licensed, and insured or off the property and all the junk picked.

Mr. Allen stated he doesn't want to get rid of the black truck.

Mr. Gentry stated they have already discussed it and that is the decision. He stated get it fixed, running, insured, or off the property along with all the other trash, if not you will be seen in court and the judge will let you know what needs to be done.

Mr. Allen stated this was filed by someone.

Mr. Gentry stated it does not matter, it does not meet our ordinance and it is not in compliance, they have voted.

Mr. Allen stated the next neighbor down.

Mr. Gentry stated Mr. Allen you need to step away from the podium.

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Mrs. Rector stated she has one other item she would like to bring up under other business because Mr. Westfall is here for it.

The President stated that would be fine.

Mrs. Rector stated what has happened is that Mr. Engelbrecht's Farm Market Store and Cider Mill are on one lot and the Cider Mill was an accessory to the Farm Market Store. She stated Mr. Westfall has now purchased an area around the Cider Mill and the lot to the north and the access is on the back street. She stated he no longer has access on to the front street. She stated any time there is a division of property done, they have to do a subdivision plat. She stated this was not done; this was sold to Mr. Westfall without Mr. Engelbrecht going through the subdivision process which would have been a replat of lot 11 and lot 8. She stated it would just be a final plat because they are not creating any additional building sites and she can approve it in the office. She stated she has been telling them this for weeks and ever since Mr. Westfall moved in, she has been telling Mr. Biggerstaff, who is supposed to be getting the subdivision done, she does not know the agreements between them, so she called them in. She stated they gave him a permit for the fence that he put up and now he is wanting signage on the building and on the awning that already exists. She stated she met with them about 2 weeks ago, Mr. Biggerstaff was going to get the plat in and she told Mr. Westfall that she was not giving any more permits until this subdivision plat is filed. She stated they left and she thought they were bringing it in and now Mr. Biggerstaff tells her he is not turning in any plat until someone signs an agreement to pay for the plat. She stated so there is a lot that has been subdivided illegally, Mr. Westfall wants to change out signage to advertise his business, and so she would like some guidance from the Attorney and from the Board. She stated she is afraid it is not going to get done.

Attorney Doll asked where the plat was.

Mr. Westfall stated the situation and in his ignorance he thought that was all done and was done in order for him to buy the property.

Attorney Doll stated it should have been done.

Mr. Westfall stated he assumed it had because he saw the plat where it was all separated.

Attorney Doll asked if he had seen the plat.

Mr. Westfall stated yes.

Mrs. Rector stated there was a plat of survey recorded by Jim Biggerstaff and a recorded deed. She stated Mr. Biggerstaff brought in a plat, but it had all minor subdivision certificates on it, but it was not right and she went over it with him.

Mr. Gentry asked if this could be a lot line adjustment.

Mrs. Rector stated it is a lot in a subdivision that they are splitting.

Attorney Doll stated that would be a huge lot line adjustment. He stated he would not recommend allowing that for this, it may create a slippery slope.

Mrs. Rector stated one other problem is that Mr. Westfall and Mr. Engelbrecht agreed on Mr. Westfall giving an ingrees/egress easement so that leaving the Farm Store you could go out on the back road also instead of the front road. She stated therefore he created a commercial entrance and has filed a commercial entrance that has to be bonded for the County to put in the drive in case it is not install. She stated so they need the plat done to be able to get the letter of credit on the commercial drive that has been approved. She stated nothing is going to be done because Mr. Engelbrecht said he wouldn't pay for it and Mr. Westfall is not willing to pay for it.

Mr. Gentry stated it sounds like a civil matter.

Attorney Doll stated they issued some permits, one for the fence and then the Building Department issued a permit for remodeling and it was basically for heating and air.

Mr. Noffsinger asked if there was a stated use on the remodeling permit.

Mr. Westfall stated they showed it as a retail store. He stated if nothing else he is trying to get the name on the awning changed that is already there.

Attorney Doll stated he understands that but technically they are not supposed to be there. He stated the way you got there is not correct. He stated there is a provision under Article XXVI B that talks about changing and advertising on buildings. He stated he understands he is the owner of that building, but he is the owner of a meets and bounds legal description on a lot in a recorded subdivision and he does not know what the heck that is under the law.

Mr. Moesner asked what the problem with Mr. Engelbrecht is not wanting to pay for the plat or the legal work to get that done. He stated he thinks that is his responsibility.

Mr. Noffsinger stated that is his opinion. He stated what they have now Commissioner Williams and himself are taking a proactive approach to work with small businesses and bring small businesses into Warrick County and make it so they can operate without so much red tape. He stated they are finding themselves here where they have given him the permit to remodel the place, they have given him a permit for a fence, and now that they want a signage we are going to tell him no because someone else didn't do what they were supposed to do. He stated he thinks the real problem is with Mr. Engelbrecht.

Mrs. Rector stated just so that the Board understands the Building Department did not give him a permit to remodel, it was already done. She stated he had already done it without any permits. She stated the whole thing was done with no permits.

Mr. Westfall stated he had no clue that he needed a permit for heating and air. He stated he had no clue that he needed a permit for a fence, so that is all stupidity on his part. He stated when Adam showed up and said he could not inspect it because he did not have a permit, he had no idea.

Attorney Doll stated either Mrs. Rector or himself can write Mr. Engelbrecht a letter that this division of land is in violation of the Comprehensive Zoning Ordinance and give him 10 days to submit an acceptable plat for the division of this. He stated or he can file an action against it for violation of the Comprehensive Zoning Ordinance for a non-conforming use. He stated in the Comprehensive Zoning Ordinance it states in Article XXVI(A), Sec 4, Sub-Section A, Maintenance and Removal - when a product, person, business or service that is advertised on a sign is abandoned or altered, the sign must be removed within sixty (60) days or altered to depict an existing product, business, or service on the premises. The owner and tenant of the land are equally responsible for removal or alteration of the sign. He stated he does not think he needs a permit.

Mr. Willis stated as long as he does not increase the size of the sign, he can change the name on the sign.

Mr. Noffsinger stated that would put him into compliance.

Mr. Willis stated yes.

Mrs. Rector stated that is how they have always done it if they were just replacing or putting a new face on, they did not have to get permits. She stated she told Mr. Westfall this, but she was to the point that she was gun shy.

Discussion was held on the rezoning having a use and development commitment.

Mrs. Rector stated it was for a cider mill and for any C-4 uses, so he is fine.

Mr. Willis stated he remembers having a discussion with him about using his own apples and having to purchase them if they needed them to make the cider.

Mrs. Rector stated she thinks they need to get the subdivision done and also find a way to get the commercial driveway in the County Right of Way done. She stated the County Driveway Ordinance is a standalone ordinance of the County Commissioners, they just take in the filing and the County Engineer approves them. She stated until the plat is filed technically that part of lot 11 is land locked and has no frontage or access.

Mr. Gentry stated they cannot extend that drive across lot 8 for the part of lot 11 where the building is located at this time, until the subdivision is filed. He stated once the plat is filed then he can.

Mrs. Rector stated the letter of credit would be for what part of the driveway exists in the County Road Right of Way.

Discussion was held on procedures for Commercial Driveways.

Mrs. Rector stated you should have put a bond up before any work is done in the road right of way.

Mr. Westfall stated everything is done except the final coat of asphalt.

Mrs. Rector stated then just get it done and then the drive will be fine.

Mr. Noffsinger stated he would like to entertain a motion to send a letter to Mr. Engelbrecht and give him 10 days to get the plat filed. Motion was seconded by Larry Willis and unanimously carried.

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Mrs. Rector stated Quail Crossing got an extension on their letters of credit two months ago for streets and sidewalks. She stated as of today they have not gotten the new letters of credit, the bank keeps saying yes they are standing behind their old letters of credit, they don't have the information they need, she keeps telling them she needs them ASAP, and this email keeps going back and forth. She stated she is tired of dealing with them and worrying about them. She stated she would like the authority to say, the letter must be here within 10 days or we are drawing the old ones.

Attorney Doll stated they have been out of compliance for close to two months, if the Board gives her the authority to send a 10 day deadline or to draw the letter of credit will be drawn, he stated he would bet she will get letters of credit.

Mrs. Rector stated it would be put on the Commissioners Agenda to draw the letters of credit. She stated they are given a 60 day notice before the letter of credit expires to get in and get on the Commissioners Agenda, they know all this. She stated the Ordinance states that new letters of credit are to be here 10 days before they expire.

Attorney Doll asked if the old ones have expired.

Mrs. Rector stated yes, except the man from the bank says they are still good and she has it in writing.

Attorney Doll stated a verbal is not reliable, so they want first of all in writing the confirmation that they will honor the existing letter of credit.

Mrs. Rector stated she has that in email.

Attorney Doll stated then the Board can make a resolution authorizing her to extend 10 days to require the letters of credit or be placed on the Commissioners Agenda for action.

Mr. Willis asked what time it had to be to the Commissioner to be placed on the agenda.

Mr. Noffsinger stated he did not believe email was a good written statement; it should be company fax or some type of letter head.

Attorney Doll stated correct the email could be better, but it is a lot better than a telephone conversation. He stated emails in court are getting to be pretty darn good.

Mrs. Rector stated for the August 24<sup>th</sup> Commissioners meeting she would need them by the 17<sup>th</sup> because they turn in the information a week before hand.

Mr. Noffsinger made a motion to get the information Mrs. Rector has received from the Bank that is via email; he would like that on either fax or mailed on their letter head.

The motion was seconded by Mike Moesner and unanimously carried.

Mr. Moesner made a motion to send them a letter requiring the new letters of credit by the 17<sup>th</sup> or the it will be placed on the Commissioners agenda for the 24<sup>th</sup> to draw on the old letters of credit.

Brad Overton seconded the motion and motion carried.

Brad Overton left the meeting.

#### **UPDATES TO COMPREHENSIVE PLAN**

#### **Town of Elberfeld, Greer Township, and Campbell Township of Warrick County, Indiana by Bernardin Lochmueller & Associates, Inc.**

Present was Matthew Schriefer, Bernardin Lochmueller & Associates, Inc.

Mr. Schriefer made a power point presentation of the proposed Comprehensive Plan Updates for the Town of Elberfeld, Greer Township, and Campbell Township.

Mr. Moesner asked who was on the Steering Committee.

Mr. Schriefer stated Don Williams, Tim Mosbey, Sherri Rector, Duane Erwin, Scott Downers, and Larry Taylor. He stated there were 12 in all he believes.

Attorney Doll stated in the Book it also has Greg Richmond, Randall Pemberton, Lynn Pierce, Steve Gibson, and Curtis Ritterling.

Mr. Schriefer continued with his presentation explaining all the meetings that were held for the Steering Committee and for the public.

Attorney Doll asked if the 57 connector had been committed to be funded yet.

Mr. Schriefer stated no, they are still out there trying to find different ways to fund it.

Mr. Noffsinger stated a lot of things have not been funded yet and this is still speculation.

Mr. Schriefer stated yes it is still speculation.

Mrs. Rector asked if there was a proposed thoroughfare plan.

Mr. Schriefer stated as for as a thoroughfare plan it would be the functional class map and then the new road way improvement.

Mrs. Rector stated right, so that is the reason she is asking. She then stated they are in a lawsuit right now where they have to go by the Comprehensive Plan that they adopted for Ohio Township that they required Jacobsville to dedicate a right of way. She stated she just wanted to bring this to the Area Plan Commission's attention that there is a thoroughfare plan for proposed roadways in there and for them to pay special attention to those because if there is any development they will have to go by what the Supreme Court rules.

Attorney Doll stated they are still waiting to hear on that and they have won it everywhere so far. He stated they hope the Supreme Court chooses not to take the case, which means the Court of Appeals decision would stand. He asked if the Commissioner had questions about this as well.

Mr. Noffsinger stated yes.

Attorney Doll stated if that is the case then the Board probably needs to continue this until the next meeting.

Mr. Gentry asked if Mr. Noffsinger would be abstaining from voting this evening on the Comprehensive Plan.

Mr. Noffsinger stated yes, tonight he would.

Mr. Gentry stated then there would only be 3 votes for approving it so it would go with no recommendation to the County Commissioners.

Mr. Gentry made a motion to table the Comprehensive Plan Updates until the September 14<sup>th</sup> meeting.

Attorney Doll stated he has read though part of this and it is really light on Agriculture and doesn't have much conversation at all to protect or promote agriculture. He stated he knows there is not a lot of farm ground, but there is some.

Mr. Moesner stated he knows there is a gob of strip ground. He then asked if there was anything planned for the stripped ground.

Mr. Schriefer stated what they think future development would be by the year 2030, is avoiding it. He stated there is enough land available around Elberfeld and I-69, where the development is going to be anyway, that has not been previously mined.

Mr. Moesner asked what is the percentage of land in Warrick County that has been stripped.

Mrs. Rector stated a lot, but she is not sure of the acreage.

Mr. Noffsinger stated they are getting ready to do a lot more. He stated he did not see anything in there that addresses an interchange coming off of I-64 to North Rd. He stated he knows it has been thrown around a couple times and there has been some push back from the Feds.

Mr. Schriefer stated yes that has been talked about several times. He stated it was included in the part of I-69 and the Elberfeld access study and they have shown all those as options but INDOT is not looking at anymore interchanges around that area because of the proximity of I-164 and I-64.

Mr. Noffsinger stated they are not looking at a lot of this stuff and it would be one of the best things that they could do for Elberfeld is creating an access point. He stated even doing 57 on a flyover there is not direct access to Elberfeld.

Mr. Schriefer stated they can recommend and suggest those types of things, it just doesn't mean it will happen.

Mr. Noffsinger stated if it is in the plan he can fight for it, if it is not, he can't do anything.

Mr. Schriefer stated that was true.

Mr. Gentry stated he agrees.

Mr. Moesner asked if the 60% increase was based on developments.

Mr. Schriefer stated it is what was included in I-69 and is based on several different sources.

Attorney Doll asked how the Evansville Sewer connect was coming.

Mr. Schriefer stated they are still in the planning stages.

Mr. Noffsinger stated they are in the purchasing stage. He stated they have purchased components, grinders, lift stations, etc. He stated all they need is one resident at the North Industrial Park to justify putting it in. He stated he doesn't want to have a potential resident and tell them it will take 3 years to get the sewer in; they want to tell them they have all the components and should be in within 8 months.

Art Noffsinger made a motion to amend the Comprehensive Plan to include an interchange at North Rd off I-64 for access to Elberfeld.

The motion was seconded by Mike Moesner and unanimously carried.

Larry Willis seconded the motion made by Guy Gentry to table the Comprehensive Plan Update until the September 14<sup>th</sup> meeting.

The motion carried unanimously.

**ATTORNEY BUSINESS:** None

**EXECUTIVE DIRECTOR BUSINESS:** None

Being no other business the meeting adjourned at 8:15 P.M.

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Guy Gentry, President

ATTEST:

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Sherri Rector, Executive Director